STATE OF MICHIGAN

COURT OF APPEALS

UNPUBLISHED
December 20, 2011

In the Matter of L. J. HENSLEY, Minor.

No. 304872
Lenawee Circuit Court
Family Division
LC No. 11-000029-NA

Before: SAAD, P.J., and STEPHENS and RONAYNE KRAUSE, JJ.

PER CURIAM.

Respondent J. Hensley appeals as of right from a circuit court order terminating his parental rights to the minor child pursuant to MCL 712A.19b(3)(e). We vacate and remand for further findings consistent with the statute.

MCL 712A.19b(3)(e) permits termination of parental rights under the following circumstances:

> The child has a guardian under the estates and protected individuals code and the parent has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209 of the estates and protected individuals code . . . regarding the child to the extent that the noncompliance has resulted in a disruption of the parent-child relationship.

The evidence showed that the child had been living with a guardian since October 2008. Respondent later petitioned for termination of the guardianship. Respondent admitted that the probate court adjourned that motion without a date in an order entered on February 25, 2009. At the same time, the probate court "granted Father a specific court structure [sic] plan specifically as follows 'Father is to have visitation March 7th, 21st, and April 18th, and every other Saturday . . . from 2:00 p.m. to 4:00 p.m.'" The evidence showed that respondent visited the child one to four times following entry of the order. The trial court found that respondent failed to follow the plan and that termination of his parental rights was in the child's best interests.

The trial court's finding that a statutory ground for termination has been proven by clear and convincing evidence is reviewed for clear error. MCR 3.977(K); *In re Trejo,* 462 Mich 341, 356-357; 612 NW2d 407 (2000). The trial court's decision regarding the child's best interests is also reviewed for clear error. *Id.*

On appeal, respondent contends that § 19b(3)(e) does not apply as a matter of law when visitation is the only element of the court-structured plan because, in that instance, § 19b(3)(e) would be superfluous to § 19b(3)(f). Because respondent did not raise this issue below, it is unpreserved. *Keenan v Dawson*, 275 Mich App 671, 681; 739 NW2d 681 (2007). Therefore, "review is limited to determining whether a plain error occurred that affected substantial rights." *In re Egbert R Smith Trust*, 274 Mich App 283, 285; 731 NW2d 810 (2007).

Statutory interpretation is a question of law that is reviewed de novo. *Van Reken v Darden, Neef & Heitsch*, 259 Mich App 454, 456; 674 NW2d 731 (2003). By its terms, § 19b(3)(e) applies to a parent who "has substantially failed, without good cause, to comply with a court-structured plan described in section 5207 or 5209" of the Estates and Protected Individuals Code (EPIC), MCL 700.1101 *et seq*. Plain and unambiguous statutory language is to be applied as written. *Macomb Co Prosecutor v Murphy*, 464 Mich 149, 158; 627 NW2d 247 (2001). Respondent has not alleged or shown that the statutory language is ambiguous and in need of interpretation. The statute refers to a particular type of court-structured plan (i.e., a plan described in section 5207 or 5209 of the EPIC), but without regard to the terms of the plan. This Court "may read nothing into an unambiguous statute that is not within the manifest intent of the Legislature as derived from the words of the statute itself." *Roberts v Mecosta Co Gen Hosp*, 466 Mich 57, 63; 642 NW2d 663 (2002). Thus, this Court cannot read into § 19b(3)(e) an exception for a court-structured plan, the only element of which is visitation. Further, where such a plan exists, § 19b(3)(e) would not be subsumed by § 19b(3)(f). The former applies when there is a plan to eliminate the need for the guardianship and return the child to her parent, but the parent demonstrates by his failure to comply with the plan that he does not want to regain custody, whereas the latter applies when there is no specific plan to eliminate the need for the guardianship and return the child to her parent, but the parent demonstrates by his failure to support the child and maintain a parent-child relationship with her that he does not want to be a parent to the child. Therefore, respondent has not shown that § 19b(3)(e) should not apply when visitation is the only element of the court-structured plan.

We agree, however, that the trial court erred in its analysis of § 19b(3)(e). The trial court found from respondent's plea that the February 2009 order was "a specific court structured plan" providing for visitation according to a set schedule and found from the evidence that respondent "failed to follow that plan[.]" The court further found that even if respondent could not personally visit the child, he should have made more of a concerted effort to maintain a parent-child relationship by means other than personal visits. Not every order entered in connection with a guardianship established under MCL 700.5204 is a court-structured plan. Further, § 19b(3)(e) applies only where a parent substantially fails, without good cause, to comply with a court-structured plan "described in section 5207 or 5209" of the EPIC. Here, the trial court found that the order for visitation was "a specific court structured plan," but did not find that the order was "a court structured plan described in section 5207 or 5209" of the EPIC (i.e., a plan adopted to rectify conditions identified at a review hearing [§ 5207] or to facilitate the child's return to the parent [§ 5209]), as opposed, for example, to a plan described in MCL 700.5204(5). Further, assuming that the visitation order was a court-structured plan described in § 5207 or § 5209 of the EPIC, the trial court failed to determine whether respondent had good cause for his failure to personally visit the child in accordance with the terms of that order. Whether respondent could have maintained the parent-child relationship through other means is not relevant because the visitation order did not require respondent to maintain contact with the child

by any means other than personal visits.[1] Finally, the trial court did not determine whether respondent's failure to comply with the plan "has resulted in a disruption of the parent-child relationship." Accordingly, we vacate the trial court's order and remand this case for further findings as required under the statute.

Vacated and remanded for further proceedings consistent with this opinion. We do not retain jurisdiction.

/s/ William Henry Saad
/s/ Cynthia Diane Stephens
/s/ Amy Ronayne Krause

[1] Whether respondent could have maintained the parent-child relationship through other means would be relevant when termination is sought under MCL 712A.19b(3)(f), see MCL 712A.19b(3)(f)(*ii*), but the trial court specifically found that termination was not warranted under that subsection.